



5001-06-P

**DEPARTMENT OF DEFENSE**

**Defense Acquisition Regulations System**

**48 CFR Parts 247 and 252**

**[Docket DARS-2019-0023]**

**RIN 0750-AK64**

**Defense Federal Acquisition Regulation Supplement: Repeal of DFARS Clause "Ordering Limitation" (DFARS Case 2019-D026)**

**AGENCY:** Defense Acquisition Regulations System, Department of Defense (DoD).

**ACTION:** Final rule.

**SUMMARY:** DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to remove a clause that is no longer necessary.

**DATES:** Effective: **[Insert date of publication in the FEDERAL REGISTER]**.

**FOR FURTHER INFORMATION CONTACT:** Ms. Carrie Moore, telephone 571-372-6093.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

DoD is amending the DFARS to remove DFARS clause 252.247-7012, Ordering Limitation, and the associated prescription at DFARS 247.271-3(g). This DFARS clause is included in solicitations and contract when an indefinite-delivery contract for the

preparation of personal property for movement or storage, or for performance of intra-city or intra-area movement, is contemplated. The clause advises a contractor of the manner in which the Government will place orders for requisite supplies and services in consideration of the contractor's guaranteed maximum daily capacity.

Federal Acquisition Regulation (FAR) clause 52.216-19, Ordering Limitations, is also included in solicitations and contracts for indefinite-delivery contracts and identifies: the minimum and maximum order quantities or values; a limitation on ordering, within a specified number of days, a total amount or quantity that exceeds the maximum order quantities or values; and, the terms and conditions for placing, accepting, or refusing orders that exceed the maximum ordering limitations identified in the clause. Upon review of the DFARS and FAR clause and based on current transportation practices, DoD determined that the FAR clause adequately addresses the necessary terms and conditions on minimum and maximum ordering limitations for the preparation of personal property for movement or storage, or performance of intra-city or intra-area movement. In the event that supplemental information on ordering in excess of a contractor's guaranteed maximum capability is necessary in a solicitation or contract, the information can be included and more appropriately belongs in

the ordering procedures of the contract. As the FAR clause adequately meets DoD needs, this DFARS clause is no longer necessary and can be removed.

The removal of this DFARS text supports a recommendation from the DoD Regulatory Reform Task Force. On February 24, 2017, the President signed Executive Order (E.O.) 13777, "Enforcing the Regulatory Reform Agenda," which established a Federal policy "to alleviate unnecessary regulatory burdens" on the American people. In accordance with E.O. 13777, DoD established a Regulatory Reform Task Force to review and validate DoD regulations, including the DFARS. A public notice of the establishment of the DFARS Subgroup to the DoD Regulatory Reform Task Force, for the purpose of reviewing DFARS provisions and clauses, was published in the *Federal Register* at 82 FR 35741 on August 1, 2017, and requested public input. No public comments were received on this clause. The DoD Task Force reviewed the requirements of DFARS clause 252.247-7012, Ordering Limitation, and determined that the DFARS coverage was unnecessary and recommended removal.

## **II. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items**

This rule only removes obsolete DFARS clause 252.247-7012, Ordering Limitation. The rule does not impose any new

requirements on contracts at or below the simplified acquisition threshold and for commercial items, including commercially available off-the-shelf items

### **III. Publication of This Final Rule for Public Comment Is Not Required by Statute**

The statute that applies to the publication of the FAR is Office of Federal Procurement Policy statute (codified at title 41 of the United States Code). Specifically, 41 U.S.C. 1707(a)(1) requires that a procurement policy, regulation, procedure or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure, or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment, because DoD is not issuing a new regulation; rather, this rule is merely removing an obsolete clause from the DFARS.

### **IV. Executive Orders 12866 and 13563**

E.O.s 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public

health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

#### **V. Executive Order 13771**

This rule is not subject to E.O. 13771, because this rule is not a significant regulatory action under E.O. 12866.

#### **VI. Regulatory Flexibility Act**

Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 41 U.S.C. 1707(a)(1) (see section III. of this preamble), the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) are not applicable. Accordingly, no regulatory flexibility analysis is required, and none has been prepared.

#### **VII. Paperwork Reduction Act**

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

## **List of Subjects in 48 CFR Parts 247 and 252**

Government procurement.

**Jennifer Lee Hawes,**

*Regulatory Control Officer, Defense Acquisition Regulations  
System.*

Therefore, 48 CFR parts 247 and 252 are amended as follows:

1. The authority citation for 48 CFR parts 247 and 252 continues to read as follows:

**Authority:** 41 U.S.C. 1303 and 48 CFR chapter 1.

### **PART 247—TRANSPORTATION**

#### **247.271-3 [Amended]**

2. Amend section 247.271-3 by—
  - a. Removing paragraph (g); and
  - b. Redesignating paragraphs (h) through (n) as (g) through (m).

### **PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

#### **252.247-7012 [Removed and Reserved]**

3. Remove and reserve section 252.247-7012.

#### **252.247-7013 [Amended]**

4. Amend section 252.247-7013 introductory text by removing "247.270-3(h)" and adding "247.271-3(g)" in its place.

#### **252.247-7014 [Amended]**

5. Amend section 252.247-7014 introductory text by removing "247.270-3(i)" and adding "247.271-3(h)" in its place.

**252.247-7016 [Amended]**

6. Amend section 252.247-7016 introductory text by removing "247.270-3(k)" and adding "247.271-3(i)" in its place.

**252.247-7017 [Amended]**

7. Amend section 252.247-7017 introductory text by removing "247.270-3(l)" and adding "247.271-3(j)" in its place.

**252.247-7018 [Amended]**

8. Amend section 252.247-7018 introductory text by removing "247.270-3(m)" and adding "247.271-3(k)" in its place.

**252.247-7019 [Amended]**

9. Amend section 252.247-7019 introductory text by removing "247.270-3(n)" and adding "247.271-3(l)" in its place.

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